

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 17 2003

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

D.R.L., a juvenile,

Defendant - Appellant.

No. 03-30092

D.C. No. CR-02-00029-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Argued and Submitted November 6, 2003
Seattle, Washington

Before: WARDLAW, GOULD, and PAEZ, Circuit Judges.

D.R.L., a 16-year-old Native American juvenile, appeals his probationary sentence following his guilty plea to the charge of an act of juvenile delinquency, which would have been a violation of 18 U.S.C. § 2242(2) (knowingly engaging

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in a sexual act with another who was either incapable of appraising the nature of the conduct or physically incapable of either declining or consenting to participate in that sexual act) if he were an adult.

The district court did not abuse its discretion by questioning witnesses at the sentencing hearing. Rather, the judge permissibly “participate[d] in the examination of witnesses for the purpose of clarifying the evidence.” *United States v. Mostella*, 802 F.2d 358, 361 (9th Cir. 1986). It is apparent from the transcripts that the court sought only to clarify D.R.L.’s acceptance of responsibility and level of remorse, issues critical to determining the appropriate sentence. At no time did the judge abandon his role as a “fair and impartial” arbiter of the proceedings. *Duckett v. Godinez*, 67 F.3d 734, 740 (9th Cir. 1995).

Nor did the district court abuse its discretion in sentencing D.R.L. to a five year probationary sentence which included placement for 24 months at the facility for juvenile sex offenders closest to his home. The district court’s finding that community-based rehabilitation would not rehabilitate D.R.L. based on the record before it is not clearly erroneous. The disposition the court imposed is the least restrictive means of fulfilling the Federal Juvenile Delinquency Act’s primary goal of rehabilitation. *See United States v. Juvenile*, 2003 WL 22410829 at *6 (9th Cir. 2003). The sentence also serves the permissible goal of punishing D.R.L. for his

involvement in a violent sexual assault upon an unconscious 14-year-old girl. *See United States v. Juvenile #1*, 38 F.3d 470, 472 (9th Cir. 1994).

AFFIRMED.